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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S  
OPPOSITION TO PLAINTIFF ASHLEY  
GJOVIK'S MOTION TO STAY (DKT.  
117)**

Judge: Honorable Edward M. Chen  
Dept: Courtroom 5, 17<sup>th</sup> Floor  
Date: December 19, 2024  
Time: 1:30 p.m.

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1 The Court should deny Plaintiff Ashley Gjovik's October 23, 2024 Motion to Stay the  
2 District Court Proceedings Pending Appeal, Dkt. 117 ("Motion to Stay"). As this Court has already  
3 surmised, the Ninth Circuit lacks appellate jurisdiction over the appeal on which Plaintiff relies. A  
4 stay would only further exacerbate the delay, and the prejudice to Apple, that Plaintiff's serially  
5 deficient pleadings have already produced.

6 **I. RELEVANT PROCEDURAL HISTORY**

7 On October 1, 2024, the Court granted in part and denied in part Apple's motion to dismiss  
8 the Fourth Amended Complaint and permitted Plaintiff to file a *fifth* amended complaint (subject  
9 to strict parameters regarding what amendments would be permitted) by October 29, 2024. *See* Dkt.  
10 112 (the "October 1 Order").<sup>1</sup> That same day, Plaintiff filed a notice of appeal of the October 1  
11 Order to the United States Court of Appeals for the Ninth Circuit (*see* Dkt. 113), notwithstanding  
12 that the October 1 Order is not a "final decision[ ] of the district courts" and thus the appellate court  
13 lacks jurisdiction under 28 U.S.C. § 1291.

14 On October 22, 2024, Plaintiff filed her Motion to Stay seeking to pause all proceedings in  
15 this Court pending her (improper) appeal. On October 24, 2024, Apple filed with the Ninth Circuit  
16 a motion to dismiss for lack of appellate jurisdiction. *Gjovik v. Apple Inc.*, No. 24-6058, Dkt. 5.1.  
17 In a one-page order issued on October 25, 2024, the Ninth Circuit dismissed Plaintiff's appeal,  
18 relying on its own review of the record, and dismissed all pending motions as moot. *Gjovik v. Apple*  
19 *Inc.*, No. 24-6058, Dkt. 7.1. A copy of the dismissal of Plaintiff's appeal was filed on this Court's  
20 docket at Dkt. 124.<sup>2</sup>

21 **II. ARGUMENT**

22 The October 25, 2024 dismissal of Plaintiff's Ninth Circuit appeal eliminates the sole  
23 justification for Plaintiff's requested relief—her Ninth Circuit appeal—and thus effectively moots  
24 her Motion to Stay. This Court should deny it. *Warren v. Uribe*, No. 210CV2120MCEEFBP, 2015

25 <sup>1</sup> Plaintiff failed to file her 5AC by the extended court-ordered deadline (November 5, 2024), thus  
26 injecting further delay and uncertainty into the proceedings.

27 <sup>2</sup> Plaintiff filed a motion to reconsider the dismissal of the appeal with the Ninth Circuit on October  
28 25, 2024. *Gjovik v. Apple Inc.*, No. 24-6058, Dkt. 8.1 (the "Motion to Reconsider"). A copy of the  
Motion to Reconsider was filed on this Court's docket at Dkt. 125. The Ninth Circuit has not invited  
any response from Apple at the time of this filing.

1 WL 8207526, at \*9 (E.D. Cal. Dec. 8, 2015) (denying as moot motion to stay action pending  
2 resolution of interlocutory appeal of district court's order where appeal was dismissed for lack of  
3 jurisdiction).

4 Additionally, Plaintiff's improper attempt to appeal a non-final order undermines judicial  
5 economy by seeking to delay proceedings in this Court even further than her sprawling successive  
6 complaints already have, at significant prejudice to Apple. Indeed, in the 13 months since Plaintiff  
7 first filed suit, the case has still not yet advanced past the pleadings. The case should proceed.

8 **III. CONCLUSION**

9 Apple respectfully requests that the Court deny Plaintiff's Motion to Stay.

10  
11 Dated: November 6, 2024

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